



Responding to a Public Records Request: A Step-By-Step Guide

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This issue brief provides a summary of the common steps performed when responding to a public records request. It is not a detailed treatment of the Public Records Law, [ss. 19.31 to 19.39, Stats.](#) An overview of the statutory framework of the Public Records Law is provided in Legislative Council Information Memorandum, [IM-2020-19](#), *The Public Records Law*.

PRELIMINARY ANALYSIS

- Is the request for information or for a record?¹
- Is the request reasonably limited as to subject matter and time frame (not overbroad)?²
- Is your office the custodian of the record?
- Is there value in contacting the requester to seek clarification on the subject of the request?

RECORD ANALYSIS STEPS

1. **Is the requested material a record?** Items excluded from the definition of “record” are:

- Purely personal property of the custodian with no relation to their office.
- Drafts, notes, preliminary computations, and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom they are working.
- Materials to which access is limited by copyright, patent, or bequest.
- Published materials in the possession of the authority, as specified in the statute.

If yes, proceed to Step 2.

If no, notify the requester that there are no records responsive to the request, in accordance with the Fulfillment Guidelines below.

2. **Is access to the record provided by law?** Examples include:

- Statutes that specifically require access (e.g., uniform traffic accident reports).
- Court decisions that require access (e.g., police “blotters”).

If yes, provide the record to the requester, in accordance with the Fulfillment Guidelines below.

If no, proceed to Step 3.

3. **Is access to the record prohibited by law?** Examples include:

- Certain employee personal information (e.g., address, phone number, Social Security number).
- Trade secrets.
- Information protected by privilege.

If yes, access to the record must be denied, in accordance with the Fulfillment Guidelines below.

If no, or if access to any portion of the record is not prohibited, proceed to Step 4.

4. **Does the public interest against the disclosure of the record outweigh the public interest for disclosure?** Referred to as “the balancing test,” this step measures whether an item is disclosable using the following considerations:

- A fact-intensive, case-by-case analysis, based on the totality of the circumstances.
- Existing public policies which compel or limit access (e.g., Open Meetings Law).

If yes, access to the record may be denied, in accordance with the Fulfillment Guidelines below.

If no, or if access to any portion of the record is not denied, proceed to Step 5.

5. **Is pre-release notice to the subject of the record required before it is released?** Pre-release notice is generally not required except in the following circumstances:

- Certain records containing information relating to an employee (e.g., investigation into employee disciplinary matters, employee records prepared by an employer other than an authority).
- Records obtained through a subpoena or search warrant.

If yes, within three days after making the decision to provide access to the record, serve written notice of the decision either by certified mail or by personally serving the subject of the record.

If no, courtesy pre-release notice may be provided but is not required.

FULFILLMENT GUIDELINES

- The custodian should inform the requester if there are no records responsive to the request.
- Requests may be responded to in-kind. Only written requests require a written response.
- A written response must set forth all of the reasons for any denial and must include a mandamus notice explaining that the denial is subject to review under [s. 19.37 \(1\), Stats.](#)
- If access to a portion of a record is denied, the confidential information must be redacted, and any part that contains public information should be provided to the requester. There is no mandatory method for redacting confidential information.
- Ten days is generally considered adequate for a response to a simple request. Complex requests may be fulfilled within a reasonable time frame considering office workload and staffing levels.
- Cost for searching may be charged at a reasonable and actual rate for the employee performing the search if the cost exceeds \$50.
- Cost for copying may be charged at a rate that does not exceed the actual cost of copying. Currently, it is the policy of both the Senate and the Assembly to charge 15 cents per page.

ADDITIONAL REFERENCES

[*Wisconsin Public Records Law Compliance Guide*](#), Wisconsin Department of Justice (October 2019).

¹ Authorities are not required to create a record in response to a request or provide information if no record exists.

² The purpose of these limitations is to prevent custodians from spending excessive amounts of time and resources responding to a request. However, the fact that a request may result in a large volume of records is not in itself a sufficient reason for denial.